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CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: _____	DEPUTY _____

DENIS J. McINERNEY
Chief
CHARLES LA BELLA
Deputy Chief
MICHAEL BRESNICK
Assistant Chief
NICOLE SPRINZEN
MARY ANN MCCARTHY
Trial Attorneys
Fraud Section, Criminal Division
U.S. Department of Justice
1400 New York Avenue, NW
Washington, DC 20530
(202) 598-2240

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

-oOo-

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID AMESBURY,

Defendant.

CASE NO. **2:11-cr-00337-JCM-GWF**
PLEA MEMORANDUM

The United States of America, by and through Denis J. McInerney, Chief, U.S. Department of Justice, Criminal Division, Fraud Section, and Charles La Bella, Deputy Chief, Michael J. Bresnick, Assistant Chief, and Nicole Sprinzen and Mary Ann McCarthy, Trial Attorneys, U.S. Department of Justice, Criminal Division, Fraud Section, the defendant, DAVID AMESBURY, and the defendant's attorney, Frank Cremen, submit this plea memorandum.

I. PLEA AGREEMENT

The United States and the defendant have reached the following plea agreement, which is not binding on the court:

1 **A. The Plea**

2 1. Defendant will plead guilty to Count One of the information, charging Defendant
 3 with conspiracy to commit mail fraud, in violation of Title 18, United States Code, Section 1349,
 4 *COUNT TWO OF THE INFORMATION* and conspiracy to commit bank fraud, in violation of Title 18, United States Code, Section 1349.
 5 Defendant also agrees to pay restitution and to the forfeiture of the property set forth in this Plea
 6 Memorandum.

7 **B. Additional Charges**

8 2. The U.S. Department of Justice, Criminal Division, Fraud Section agrees to bring
 9 no additional criminal charges in the District of Nevada against the defendant relating to or arising
 10 from the offenses charged in the information, except for any crime of violence and any crime
 11 unknown to the Fraud Section before the time the parties sign this Plea Memorandum.

12 **C. Sentencing Guideline Calculations**

13 3. Defendant understands that the Court is required to consider United States
 14 Sentencing Guidelines ("U.S.S.G." or "Sentencing Guidelines") among other factors in
 15 determining the defendant's sentence. Defendant understands that the Sentencing Guidelines are
 16 advisory, and that after considering the Sentencing Guidelines, the Court may be free to exercise its
 17 discretion to impose any reasonable sentence up to the maximum set by statute for the crime of
 18 conviction.

19 4. The parties agree that the following calculations of the United States Sentencing
 20 Guidelines (2010) apply:

21	Base Offense Level	
22	(U.S.S.G. §2B1.1(a)):	7
23	Loss Amount of \$1,000,000 to \$2,500,000	
24	(U.S.S.G. §2B1.1(b)(1)(I)):	16
25	Sophisticated Means	
26	(U.S.S.G. §2B1.1(b)(9)(C)):	2
27	Abuse of Position of Trust	
	(U.S.S.G. §3B1.3):	2

TOTAL

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5. Pursuant to U.S.S.G. §3E1.1(a), the United States will recommend that the defendant receive a two (2) level adjustment for acceptance of responsibility unless defendant (a) fails to make a complete factual basis for the guilty plea at the time it is entered; (b) is untruthful with the Court or probation officers in any respect, including without limitation, financial information; (c) denies involvement in the offense or provides conflicting statements regarding defendant's involvement; (d) attempts to withdraw the guilty plea; (e) engages in criminal conduct; (f) fails to appear in court; or (g) violates the conditions of defendant's pretrial release conditions.

6. Pursuant to U.S.S.G. §3E1.1(b), the United States will, in its sole discretion, make a motion for an additional one-level adjustment for acceptance of responsibility prior to sentencing if the defendant timely notifies the United States of the defendant's intention to plead guilty, thereby permitting the United States to avoid preparing for trial and allowing for the efficient allocation of resources.

7. Defendant's Criminal History Category will be determined by the court.

D. Other Sentencing Matters

8. The parties agree that the Sentencing Guideline calculations are based on information now known and could change upon investigation by the United States Probation Office. It is possible that factors unknown or unforeseen by the parties to the Plea Memorandum may be considered in determining the offense level, specific offense characteristics, and other related factors. In that event, the defendant will not withdraw his plea of guilty. Both the defendant and the United States are free to: (a) supplement the facts by supplying relevant information to the United States Probation Office and the Court, and (b) correct any and all factual inaccuracies relating to the calculation of the sentence.

9. The stipulations in this Plea Memorandum do not bind either the United States Probation Office or the Court. Both defendant and the United States are free to: (a) supplement the

1 facts by supplying relevant information to the United States Probation Office and the Court, and
2 (b) correct any and all factual inaccuracies relating to the calculation of the sentence.

3 **E. Fines and Special Assessment**

4 10. Defendant agrees that the Court may impose a fine due and payable immediately
5 upon sentencing.

6 11. Defendant will pay the special assessment of \$100 per count of conviction at the
7 time of sentencing.

8 **F. Restitution**

9 12. Defendant agrees to make restitution to all victims of his offenses, namely, the
10 members of the homeowners' associations that were defrauded, described below in Section IV.
11 Defendant understands and agrees that this amount is \$3,000, the amount of the kickback payment
12 that he received pursuant to the conspiracy. Defendant understands that any restitution imposed by
13 the Court may not be discharged in whole or in part in any present or future bankruptcy
14 proceeding.

15 **G. Forfeiture**

16 13. In consideration for the government agreeing to the terms of this Plea
17 Memorandum, Defendant knowingly and voluntarily agrees to the abandonment, the civil
18 administrative forfeiture, the civil judicial forfeiture, or the criminal forfeiture money judgment of
19 \$3,000 in United States Currency ("property"), in addition to any order of restitution even though
20 the amount of restitution may differ from the amount of forfeiture. Defendant agrees that
21 Defendant will ask the Court to impose an order of forfeiture in the amount stated above and will
22 not ask the Court to adjust the amount in any respect and will sign a consent order of forfeiture to
23 this effect. Defendant admits that if the case were to proceed to trial, the government could prove
24 forfeiture in excess of the amount stated here.

25 14. Defendant knowingly and voluntarily agrees to abandon or to forfeit the property
26 to the United States.

27

1 15. Defendant knowingly and voluntarily agrees to relinquish all right, title, and
2 interest in the property.

3 16. Defendant knowingly and voluntarily agrees to waive his right to any
4 abandonment proceedings, any civil administrative forfeiture proceedings, any civil judicial
5 forfeiture proceedings, or any criminal forfeiture proceedings ("proceedings") of the property.

6 17. Defendant knowingly and voluntarily agrees to waive service of process of any
7 and all documents filed in this action or any proceedings concerning the property arising from the
8 facts and circumstances of this case.

9 18. Defendant knowingly and voluntarily agrees to waive any further notice to the
10 Defendant, Defendant's agents, or Defendant's attorney regarding the abandonment or the
11 forfeiture and disposition of the property.

12 19. Defendant knowingly and voluntarily agrees not to file any claim, answer,
13 petition, or other documents in any proceedings concerning the property.

14 20. Defendant knowingly and voluntarily agrees to waive the statute of limitations,
15 the CAFRA requirements, Fed. R. Crim. P. 7(c)(2), 32.2(a), and 32.2(b)(3), and the constitutional
16 due process requirements of any abandonment proceeding or any forfeiture proceeding concerning
17 the property.

18 21. Defendant knowingly and voluntarily agrees to waive Defendant's right to a jury
19 trial on the forfeiture of the property.

20 22. Defendant knowingly and voluntarily agrees to waive (a) all constitutional, legal,
21 and equitable defenses to, (b) any constitutional or statutory double jeopardy defense or claim
22 concerning, and (c) any claim or defense under the Eighth Amendment to the United States
23 Constitution, including, but not limited to, any claim or defense of excessive fine in any
24 proceedings concerning the property.

25 23. Defendant knowingly and voluntarily agrees to the entry of an Order of Forfeiture
26 of the property to the United States.

1 24. Defendant knowingly and voluntarily agrees and understands the abandonment,
2 the civil administrative forfeiture, the civil judicial forfeiture, or the criminal forfeiture of the
3 property shall not be treated as satisfaction of any assessment, fine, restitution, cost of
4 imprisonment, or any other penalty this Court may impose upon the Defendant in addition to the
5 abandonment or the forfeiture.

6 **H. Waiver of Appeal**

7 25. In exchange for the concessions made by the United States in this Plea
8 Memorandum, Defendant knowingly and expressly waives the right to appeal any sentence that is
9 imposed within the applicable Sentencing Guideline range as calculated by the Court, further
10 waives the right to appeal the manner in which that sentence was determined on the grounds set
11 forth in Title 18, United States Code, Section 3742, and further waives the right to appeal any other
12 aspect of the conviction or sentence, including any order of restitution and forfeiture. Defendant
13 reserves only the right to appeal any portion of the sentence that is an upward departure from the
14 applicable Sentencing Guideline range calculated by the Court.

15 26. Defendant also waives all collateral challenges, including any claims under 28
16 U.S.C. § 2255, to the Defendant's conviction, sentence and the procedure by which the Court
17 adjudicated guilt and imposed sentence, except non-waivable claims of ineffective assistance of
18 counsel.

19 **I. Additional Promises, Agreements, and Conditions**

20 27. In exchange for the United States entering into this Plea Memorandum, Defendant
21 agrees that (a) the facts set forth in Section IV of this Plea Memorandum shall be admissible
22 against the Defendant under Fed. R. Evid. 801(d)(2)(A) in the following circumstances: (i) for any
23 purpose at sentencing; and (ii) in any subsequent proceeding, including a trial in the event the
24 Defendant does not plead guilty or withdraws the Defendant's guilty plea, to impeach or rebut any
25 evidence, argument or representation offered by or on the Defendant's behalf; and (b) the
26 Defendant expressly waives any and all rights under Fed. R. Criminal P. 11(f) and Fed. R. Evid.

1 410 with regard to the facts set forth in Section IV of the Plea Memorandum to the extent set forth
2 above.

3 28. The parties agree that no promises, agreements, and conditions have been entered
4 into other than those set forth in this plea memorandum, and will not be entered into unless in
5 writing and signed by all parties.

6 **J. Limitations**

7 29. This Plea Memorandum is limited to the Criminal Division of the United States
8 Department of Justice and cannot bind any other federal, state or local prosecuting, administrative,
9 or regulatory authority. But, this Plea Memorandum does not prohibit the United States through
10 any agency thereof, the Criminal Division of the United States Department of Justice, or any third
11 party from initiating or prosecuting any civil proceeding directly or indirectly involving the
12 Defendant, including but not limited to, proceedings under the False Claims Act relating to
13 potential civil monetary liability or by the Internal Revenue Service relating to potential tax
14 liability.

15 **K. Cooperation**

16 30. Defendant agrees, if requested by the United States, to provide complete and
17 truthful information and testimony concerning Defendant's knowledge of all other persons who are
18 committing or have committed offenses against the United States or any state, and agrees to
19 cooperate fully with the United States in the investigation and prosecution of such persons.

20 31. In the event the government decides in its sole discretion that the assistance
21 provided by Defendant amounts to "substantial assistance" pursuant to U.S.S.G. § 5K1.1, the
22 United States will timely file a motion for downward departure from the applicable Sentencing
23 Guideline calculation. The Court has the sole discretion to grant such a motion.

24 32. Defendant agrees that a motion for downward departure based on substantial
25 assistance shall not be made under any circumstances unless Defendant's cooperation is deemed to
26 be substantial assistance by the government. The United States has made no promise, implied or
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1 otherwise, that Defendant will be granted a departure for substantial assistance. Further, no
2 promise has been made that such a motion will be made even if Defendant complies with the terms
3 of this Plea Memorandum in all respects but has been unable to provide substantial assistance as
4 determined in the sole discretion of the government.

5 33. The United States agrees to consider the totality of the circumstances, including
6 but not limited to, the following factors, in determining whether, in the sole discretion of the
7 government, Defendant has provided substantial assistance which would merit a motion by the
8 United States for a downward departure from the applicable Guideline:

9 a. The United States' evaluation of the significance and usefulness of Defendant's
10 assistance;

11 b. The truthfulness, completeness, and reliability of any information or testimony
12 provided by Defendant;

13 c. The nature and extent of Defendant's assistance;

14 d. The truthfulness and completeness in disclosing and bringing to the attention of
15 the Government all crimes which Defendant has committed and all administrative, civil, or
16 criminal proceedings, investigations, and prosecutions in which he has been or is a subject, target,
17 party, or witness;

18 e. The truthfulness and completeness in disclosing and providing to the Government,
19 upon request, any document, record, or other evidence relating to matters about which the
20 Government or any designated law enforcement agency inquires, including but not limited to,
21 Defendant's personal finances;

22 f. Any injury suffered, or any danger or risk of injury to Defendant or Defendant's
23 family resulting from defendant's assistance; and,

24 g. The timeliness of Defendant's assistance.

25 34. Defendant agrees that in the event the United States files a downward departure
26 motion based upon Defendant's substantial assistance, the United States reserves the right to make
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1 a specific recommendation to the Court regarding the extent of such a departure. Defendant
2 understands and agrees that the final decision as to how much of a departure, if any, is warranted
3 rests solely with the Court.

4 **L. Breach**

5 35. Defendant agrees that if Defendant, at any time after the signature of this Plea
6 Memorandum and execution of all required certifications by Defendant, Defendant's counsel, and
7 for the government, knowingly violates or fails to perform any of Defendant's obligations under
8 this Memorandum ("a breach"), the government may declare this Memorandum breached. All of
9 Defendant's obligations are material, a single breach of this is sufficient for the government to
10 declare a breach, and Defendant shall not be deemed to have cured a breach without the express
11 agreement of the government in writing. If the government declares this Memorandum breached,
12 and the Court finds such a breach to have occurred, then: (a) if Defendant has previously entered a
13 guilty plea pursuant to this Memorandum, Defendant will not be able to withdraw the guilty plea,
14 and (b) the government will be relieved of all its obligations under this agreement.

15 **II. PENALTY**

16 36. The maximum penalty for a violation of Title 18, United States Code, Section
17 1349, is imprisonment for not more than thirty (30) years, a \$1,000,000 fine, or both. Defendant is
18 also subject to supervised release for a term of not greater than five (5) years.

19 37. Supervised release is a period of time following imprisonment during which
20 Defendant will be subject to various restrictions and requirements. Defendant understands that if
21 Defendant violates one or more of the conditions of any supervised release imposed, Defendant
22 may be returned to prison for all or part of the term of supervised release, which could result in
23 Defendant serving a total term of imprisonment greater than the statutory maximum stated above.

24 38. Defendant is required to pay for the costs of imprisonment, probation, and
25 supervised release, unless the Defendant establishes that the Defendant does not have the ability to
26 pay such costs, in which case the court may impose an alternative sanction such as community
27 service.

III. ELEMENTS

39. The essential elements of the offenses are:

a. For the offense of conspiracy to commit mail fraud, in violation of 18 U.S.C. § 1349, the essential elements are as follows:

(1) First, from at least as early as in or about March 2008 through at least in or about September 2008, there was an agreement between two or more persons to commit mail fraud;

(2) Second, the Defendant was a party to or member of that agreement; and,

(3) Third, the Defendant joined the agreement or conspiracy knowing of at least one of its objects and intending to help accomplish it.

b. For the offense of conspiracy to commit bank fraud, in violation of 18 U.S.C. § 1349, the essential elements are as follows:

(1) First, from at least as early as in or about October 2008 through at least in or about July 2009, there was an agreement between two or more persons to commit bank fraud;

(2) Second, the Defendant was a party to or member of that agreement;

(3) Third, the Defendant joined the agreement or conspiracy knowing of at least one of its objects and intending to help accomplish it;

(4) Fourth, promises or statements made or to be made to the financial institution were material;

(5) Fifth, the financial institution was federally insured.

IV. FACTS

40. Defendant is pleading guilty because Defendant is guilty of the charged offenses.

41. Defendant specifically admits and declares under penalty of perjury that all of the facts set forth below are true and correct:

1 42. From at least as early as in or about March 2008 through at least in or about
2 September 2008, Defendant knowingly participated in a scheme to control various Homeowner
3 Association (HOA) boards of directors so that the HOA boards would award the handling of
4 construction defect lawsuits and remedial construction contracts to a law firm and construction
5 company designated by Defendant's co-conspirators.

6 43. In order to accomplish this scheme, Defendant, an attorney practicing law in Las
7 Vegas, Nevada, agreed to run the HOA board elections at Chateau Nouveau and Pebble Creek in
8 order to create the appearance that the elections were legitimate and were run by an independent
9 attorney. Defendant, and other "special election masters" were supposed to: (i) contact the
10 bonafide homeowners to inform them of the election; (ii) mail the bonafide homeowners election
11 ballots and voting instructions; (iii) collect and secure those election ballots returned by mail until
12 the date of the election; and (iv) preside over the HOA board election, including supervising the
13 counting of ballots. However, Defendant was paid \$3,000 by or on behalf of Co-Conspirators A
14 and B for his assistance in rigging the elections.

15 44. Defendant agreed and allowed the bonafide homeowners at Chateau Nouveau and
16 Pebble Creek to mail their election ballots to his law office under the belief that he would keep them
17 secure until the election. In fact, Defendant agreed and allowed other co-conspirators to have access
18 to the ballots and use his law office for the purpose of opening the ballots and pre-counting the
19 number of votes entered for each candidate to then know the number of fake ballots which needed
20 to be created to ensure the co-conspirator up for election won the seat on the HOA board.

21 45. Defendant ran the boards' election meetings knowing that he allowed co-
22 conspirators to tamper with the election ballots and failing to disclose his relationship to Co-
23 Conspirator A and B and others to the HOA or its bonafide homeowners.

24 46. From at least in or about October 2008 through in or about July 2009, Defendant
25 and other co-conspirators signed a joint venture agreement with S.K. to operate Co-Conspirator E
26 for a period of three years without informing the Nevada county officials who provided the
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1 principals of Co-Conspirator E with a lease for the commercial space in which it was located,
2 contrary to the requirements of the lease terms.

3 47. Defendant and his co-conspirators agreed and did meet with loan officers from
4 banks in the Las Vegas area, including N.B., a federally insured bank, seeking the refinancing of a
5 loan to Co-Conspirator E, while failing to inform the banks that S.K. operated Co-Conspirator E on
6 a day-to-day basis, paid a monthly fee of \$8,000 to the principals of Co-Conspirator E, and retained
7 any additional profits from the operation of Co-Conspirator E.

8 48. Defendant and his co-conspirators agreed to and did obtain financial statements
9 for the business entity under which S.K. operated Co-Conspirator E with the intent of altering the
10 financial statements to falsely represent the financial statements to be those of the business entity
11 through which the principals owned Co-Conspirator E; a co-conspirator of Defendant made the
12 changes to the financial statements.

13 49. Defendant and his co-conspirators signed a loan application for submission to
14 N.B., without informing the bank of the true business arrangement with S.K. and representing the
15 financial statements of the entity through which S.K. operated Co-Conspirator E as those of the
16 business entity through which the principals owned Co-Conspirator E, knowing that the bank would
17 not issue a loan if the bank knew the true state of affairs.

18 **V. ACKNOWLEDGMENT**

19 50. Defendant acknowledges by the Defendant's signature below that Defendant has
20 read this Memorandum of Plea, that Defendant understands the terms and conditions,
21 and the factual basis set forth herein, that Defendant has discussed these matters with Defendant's
22 attorney, and that the matters set forth in this memorandum, including the facts set forth in Part IV
23 above, are true and correct.

24 51. Defendant acknowledges that Defendant has been advised, and understands, that
25 by entering a plea of guilty the Defendant is waiving, that is, giving up, certain rights guaranteed to
26 the Defendant by law and by the Constitution of the United States. Specifically, Defendant is
27 giving up:

1 a. The right to proceed to trial by jury on the original charges, or to a trial by a judge
2 if Defendant and the United States both agree;

3 b. The right to confront the witnesses against the Defendant at such a trial, and to
4 cross-examine them;

5 c. The right to remain silent at such trial, with such silence not to be used against
6 Defendant in any way;

7 d. The right, should Defendant so choose, to testify in Defendant's own behalf at
8 such a trial;

9 e. The right to compel witnesses to appear at such a trial, and to testify in
10 Defendant's behalf; and


11 f. The right to have the assistance of an attorney at all stages of such proceedings.

12 52. Defendant acknowledges that Defendant is, in all respects, satisfied by the
13 representation provided by Defendant's attorney and that Defendant's attorney has discussed with
14 Defendant the burdens and benefits of this agreement and the rights that Defendant has waived
15 herein.

16 53. Defendant, Defendant's attorney, and the attorney for the United States
17 acknowledge that this Plea Memorandum contains the entire negotiated and agreed to by and
18 between the parties, and that no other promise has been made or implied by either the Defendant,
19 Defendant's attorney, or the attorney for the United States.

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24 7-28-11
DATED

DENIS J. McINERNEY
Chief
United States Department of Justice,
Criminal Division, Fraud Section

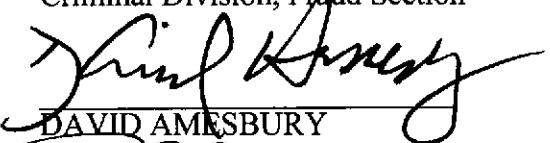

CHARLES LA BELLA
Deputy Chief
MICHAEL BRESNICK
Assistant Chief
NICOLE SPRINZEN
MARY ANN MCCARTHY
Trial Attorneys


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7/25/11
DATED

7-25-11
DATED

United States Department of Justice
Criminal Division, Fraud Section


DAVID AMESBURY
Defendant


FRANK CREMEN
Counsel for Defendant